



[Billing Code: 6750-01S]

## FEDERAL TRADE COMMISSION

### 16 CFR Part 309

#### Labeling Requirements for Alternative Fuels and Alternative Fueled Vehicles

**AGENCY:** Federal Trade Commission (FTC or Commission).

**ACTION:** Notice of proposed rulemaking; request for public comments.

**SUMMARY:** The Commission seeks public comment on two amendments to its “Labeling Requirements for Alternative Fuels and Alternative Fueled Vehicles” (“Alternative Fuels Rule” or “Rule”). Specifically, the proposed amendments consolidate the FTC’s alternative fueled vehicle (AFV) labels with new fuel economy labels required by the Environmental Protection Agency (EPA) and the National Highway Traffic Safety Administration (NHTSA) and eliminate FTC requirements for used AFV labels.

**DATES:** Written comments must be received on or before August 17, 2012.

**ADDRESSES:** Interested parties are invited to submit written comments electronically or in paper form by following the instructions in section V of the **SUPPLEMENTARY**

**INFORMATION** section below. Comments in electronic form should be submitted using the following weblink <https://ftcpublic.commentworks.com/ftc/atlfuelslabelingnprm>

(and following the instructions on the web-based form). Comments filed in paper form should be mailed or delivered to the following address: Federal Trade Commission, Office of the Secretary, Room H-113 (Annex N), 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580, in the manner detailed in the **SUPPLEMENTARY INFORMATION** section below.

**FOR FURTHER INFORMATION CONTACT:** Hampton Newsome, (202) 326-2889, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

The Energy Policy Act of 1992 (“EPA 92” or “Act”)<sup>1</sup> established federal programs that encourage the development of alternative fuels and alternative fueled vehicles (AFVs). Section 406(a) of the Act directed the Commission to establish uniform labeling requirements for alternative fuels and AFVs. Under the Act, such labels must provide “appropriate information with respect to costs and benefits [of alternative fuels and AFVs], so as to reasonably enable the consumer to make choices and comparisons.” In addition, the required labels must be “simple and, where appropriate, consolidated with other labels providing information to the consumer.”<sup>2</sup>

In response to EPA 92, the Commission published the Alternative Fuels Rule in 1995.<sup>3</sup> The Rule requires labels on new and used AFVs that run on liquid and non-liquid fuels, such as ethanol and other alcohols including E85 ethanol-gasoline mixtures, natural gas, liquefied petroleum gas, hydrogen, coal-derived liquid fuels, fuels derived from biological materials (*e.g.*, 100% biodiesel), and electricity. The labels for new AFVs disclose the vehicle’s estimated cruising range (*i.e.*, the travel distance on a single charge or tank of fuel), general factors consumers should consider before buying an AFV, and toll free telephone numbers and websites

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<sup>1</sup> Pub. L. 102-486, 106 Stat. 2776 (1992).

<sup>2</sup> 42 U.S.C. 13232(a).

<sup>3</sup> 60 FR 26926 (May 19, 1995).

for additional information from the Department of Energy (DOE) and NHTSA.<sup>4</sup> Labels for used AFVs contain only the general buying factors and DOE/NHTSA contact information.<sup>5</sup>

The Rule also requires labels on fuel dispensers for *non-liquid* alternative fuels, such as electricity, compressed natural gas, and hydrogen.<sup>6</sup> The labels for electricity provide the dispensing system's kilowatt capacity, voltage, and other related information. The labels for other non-liquid fuels disclose the fuel's commonly used name and principal component (expressed as a percentage).<sup>7</sup>

## **II. Regulatory Review**

In a June 1, 2011, Advance Notice of Proposed Rulemaking (ANPR),<sup>8</sup> the Commission initiated its regulatory review of the Rule to ensure that FTC-required vehicle labels and EPA fuel economy labeling requirements are consistent.<sup>9</sup> In doing so, the Commission sought

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<sup>4</sup> The Rule requires manufacturers to have a reasonable basis for the vehicle cruising range, and, for certain AFVs, specifies the test method for calculating that range. 16 CFR 309.22.

<sup>5</sup> The general factors listed on the current label include fuel type, operating costs, fuel availability, performance, convenience, energy security, energy renewability, and emissions. *See* 16 CFR Part 309, Appendix A.

<sup>6</sup> The Commission's Fuel Labeling Rule, 16 CFR Part 306, addresses labeling for *liquid* alternative fuels, such as ethanol and liquefied natural gas.

<sup>7</sup> The Rule requires fuel importers, producers, and distributors to have a reasonable basis for the information disclosed on the label, maintain records, and provide certifications when transferring fuel. 16 CFR 309.11-14.

<sup>8</sup> 76 FR 31513.

<sup>9</sup> At the same time, the Commission also announced postponement of amendments to its "Guide Concerning Fuel Economy Advertising for New Automobiles" ("Fuel Economy Guide") (16 CFR Part 259) pending completion of EPA's fuel economy labeling requirements and the Commission's review of the Alternative Fuels Rule. 76 FR 31467 (June 1, 2011). Once the Commission completes the Alternative Fuels Rule review, it will decide how to proceed with

comment about the Rule's costs, benefits, and regulatory impact. In addition, the Commission raised three specific issues for comment: (1) the consolidation of the FTC label with EPA's fuel economy label; (2) the inclusion of new definitions for AFVs contained in recent legislation; and (3) the retention of labeling requirements for used AFVs.

The Commission received nine comments.<sup>10</sup> Seven urged the Commission to consolidate its AFV labeling requirements with EPA's fuel economy labels (including those for newly defined AFVs).<sup>11</sup> No comments opposed consolidation. In addition, three comments supported elimination of FTC labels for used AFVs while one supported their continuation.<sup>12</sup> Two comments also recommended that the Commission retain existing FTC requirements for labeling non-liquid alternative fuels.<sup>13</sup>

In response, the Commission proposes to consolidate FTC labels with EPA fuel economy labels for all AFVs, including those identified in recent legislation, and eliminate FTC labeling requirements for used AFVs. However, the Commission does not propose changes to existing alternative fuel rating requirements. For each of these issues, the following sections provide

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amendments to the Fuel Economy Guide.

<sup>10</sup> The comments are available at <http://www.ftc.gov/os/comments/alternativefuelsanpr/index.shtm>. The comments include the Alliance of Automobile Manufacturers (Alliance) (# 00008), Association of Global Automakers (Global Automakers) (# 00006), Clean Energy Fuels (# 00010), Denney (# 00003), Edison Electric Institute (EEI) (# 00005), General Motors Company (GM) (# 00012), Gibbs (# 00004), Growth Energy (# 00007), and National Automobile Dealers Association (NADA) (# 00011).

<sup>11</sup> See the Alliance, Global Automakers, Denney, EEI, GM, Growth Energy, and NADA.

<sup>12</sup> The Alliance, NADA, and GM (supported elimination); and EEI (supported continuation).

<sup>13</sup> NADA and EEI.

background on alternative fuel requirements, discuss the comments received, and explain the proposed amendments.

#### **A. EPA and NHTSA Fuel Economy Labels**

*Background:* The Commission requested comment on whether it should consolidate its AFV labels with fuel economy labels recently issued by EPA to provide a uniform label for consumers.<sup>14</sup> The new EPA labels apply to both conventional vehicles and AFVs, including AFVs subject to the FTC's labeling requirements.<sup>15</sup> The EPA label differs depending on the type of AFV. For electric and compressed natural gas vehicles, the labels disclose information about fuel economy, greenhouse gases (and other emissions), cruising (driving) range, and estimated annual fuel cost. For ethanol-fueled vehicles, including flexible fuel vehicles (FFVs) (*i.e.*, dual fueled vehicles) that operate on a combination of gasoline and ethanol, the labels disclose the fuel economy, fuel cost, and emissions based on gasoline operation and allow, but do not require, a driving range for gasoline or alternative fuel operation. All the EPA labels reference [www.fueleconomy.gov](http://www.fueleconomy.gov), which provides comprehensive consumer information about fuel economy and alternative fuels. Given this content, the ANPR requested comment on whether the EPA label accomplishes the EPAAct 92's goal of providing "appropriate information with

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<sup>14</sup> See 76 FR 39478 (July 6, 2011).

<sup>15</sup> See EPA sample label at <http://www.epa.gov/otaq/carlabel/fealllabels.pdf>. Although EPA regulations (40 CFR Part 600) require labeling for all vehicles covered under the Alternative Fuels Rule, EPA did not propose a specific label for several vehicle types not generally available to individual consumers such as those fueled by liquefied petroleum gas, coal-derived liquid fuels, or fuels (other than alcohol) derived from biological materials. See 76 FR 39478. However, EPA has authority to require labels for such vehicles.

respect to costs and benefits [of alternative fuels and AFVs], so as to reasonably enable the consumer to make choices and comparisons.”<sup>16</sup>

The ANPR also sought comment on whether to allow the use of the EPA label, in lieu of the FTC label, on three categories of vehicles (hydrogen fuel cell, advanced lean burn, and hybrid motor vehicles) that were added to the definition of “alternative fuel vehicle” by the National Defense Authorization Act for Fiscal Year 2008.<sup>17</sup> The Commission noted that, because these vehicles are already covered under existing labeling programs, additional labeling requirements appear unnecessary.<sup>18</sup>

*Comments:* Seven comments supported consolidating the FTC and new fuel economy labels explaining that a single label would reduce consumer confusion and industry burden.<sup>19</sup> No comments opposed such a change.<sup>20</sup> These comments noted that the EPA fuel economy

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<sup>16</sup> 42 U.S.C. 13232(a).

<sup>17</sup> 42 U.S.C. 13211(3)(B). According to the legislative history, the purpose of these amendments is to “allow additional types of vehicles to be used to meet minimum” requirements for vehicle and fuel use by Federal agencies (*i.e.*, “Federal fleet requirements”). 153 CONG. REC. 147 (2007).

<sup>18</sup> 76 FR at 31516.

<sup>19</sup> *See, e.g.*, the Alliance, EEI, Denney, GM, Global Automakers, Growth Energy, and NADA.

<sup>20</sup> Clean Energy Fuels offered suggestions for new label content, including “fuel displacement” of foreign oil, a full life cycle assessment of greenhouse gas emissions and both fossil-based and biological-based natural gas values for natural gas vehicles. However, the comment did not specify how such information should be derived or whether consumers would understand such information. Given the Commission’s proposal to eliminate the FTC label, such suggestions are best directed to EPA for consideration in future development of their fuel economy label.

labels offer as much or more information than the FTC labels with one exception. Finally, they noted that EPA labels cover the three vehicle types added by recent legislation.

Commenters explained that the FTC labeling requirements duplicate the new fuel economy labels mandated by the EPA and NHTSA, create potential confusion, and provide little, if any, benefit for consumers.<sup>21</sup> For instance, the Alliance of Automobile Manufacturers (Alliance) argued such duplication creates potential consumer confusion by presenting the same or similar information on differently formatted labels and imposes costs on manufacturers with no significant consumer benefit. General Motors (GM) also explained that the overlapping labels have led to inconsistencies between the driving range numbers on FTC and EPA labels.<sup>22</sup> The Alliance and the Association of Global Automakers (Global Automakers) noted that, over the past several years, industry members have urged state and federal agencies to develop a single national vehicle label.<sup>23</sup> No commenters disagreed with these views.

Five comments suggested that elimination of the FTC labels would not harm consumers because the EPA fuel economy labels provide more vehicle-specific information than the FTC

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<sup>21</sup> See, e.g., the Alliance, EEI, Denney, GM, Global Automakers, Growth Energy, and NADA.

<sup>22</sup> See GM. For example, consolidation would eliminate current inconsistencies between cruising range values on FTC and EPA electric vehicle labels. To address electric vehicles introduced pending completion of this rulemaking, the Commission issued a policy stating that it will not enforce current FTC labeling requirements for any electric vehicle bearing an EPA-mandated fuel economy label and will encourage vehicle manufacturers to use the EPA label in lieu of the FTC label. See FTC enforcement policy on driving range numbers for electric vehicles at <http://www.ftc.gov/opa/2011/05/afr.shtml>.

<sup>23</sup> Working toward that goal, EPA has coordinated with California to incorporate the state's labeling information into the national fuel economy label. See the Alliance and Global Automakers. Global Automakers urged the Commission to work with EPA and NHTSA to resolve any deficiencies the Commission finds with the fuel economy label.

label.<sup>24</sup> Specifically, Global Automakers explained the EPA labeling program provides comprehensive fuel economy information by requiring labels that disclose the most important vehicle information and offers a website, [www.fueleconomy.gov](http://www.fueleconomy.gov), with more detailed information, including data on older vehicles.<sup>25</sup> According to the Alliance, the new EPA fuel economy label, like the current FTC label, requires driving range information for most AFVs, including electric vehicles (EVs), plug-in hybrid electric vehicles (PHEVs), hydrogen fuel cell vehicles (FCVs), and compressed natural gas (CNG-fueled) vehicles. At the same time, the EPA label provides additional information not found on the FTC label including fuel costs, smog ratings, and greenhouse gas information.<sup>26</sup> Two comments, GM and the Alliance, noted that, unlike the FTC label for FFVs, the EPA rules do not require driving range information but instead provide manufacturers the option to include the range for gasoline and alternative fuel (e.g., E85) operation. The Alliance recommended that the FTC provide the same flexibility. No comments identified harm to consumers from consolidation.

Finally, three comments recommended that the FTC allow manufacturers to use the EPA fuel economy label for vehicle categories added to the definition of AFV by recent legislation (*i.e.*, lean burn, hybrid, and fuel cell vehicles). No comments opposed this approach. Edison Electric Institute (EEI) argued that the federal requirements should be the same for all types of vehicles to minimize industry costs and ensure consumers can make “apples to apples” vehicle

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<sup>24</sup> Global Automakers, the Alliance, Growth Energy, NADA, and GM.

<sup>25</sup> According to the Alliance, many consumers conduct internet research to make basic vehicle purchasing decisions before ever visiting a dealership. *See also*, Global Automakers, Denney, and NADA.

<sup>26</sup> *See* Growth Energy and NADA.



comparisons. The Alliance agreed, noting that EPA labeling rules already cover these vehicles. GM also explained that FTC labels for these vehicles would not provide any significant additional consumer benefit and could increase the opportunity for errors.

*Discussion:* Consistent with the comments, the Commission proposes to require manufacturers to use EPA's fuel economy label for alternative fuel vehicles, including the vehicle categories added by recent legislation, in lieu of existing FTC requirements.<sup>27</sup> The Commission agrees with commenters that consolidating the FTC and EPA labels will benefit consumers and industry by eliminating potential confusion caused by overlapping or inconsistent labels, and by reducing the burden on manufacturers to create and post two labels.<sup>28</sup> Generally, the EPA labels are likely to be more helpful to consumers in making choices and comparisons because they contain more vehicle-specific information than the current FTC labels. The fuel economy labels also link consumers to [www.fueleconomy.gov](http://www.fueleconomy.gov), which provides comprehensive comparative information for conventional vehicles and AFVs.<sup>29</sup>

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<sup>27</sup> The proposed amendments add the statutory definitions for lean burn, hybrid, and fuel cell vehicles to the Rule.

<sup>28</sup> In addition to concerns about electric vehicle labels discussed above, the EPA and FTC labels disclose driving range for E85 dual-fueled vehicles in different ways. The FTC label requires a lower range number based on city fuel economy and an upper range number based on highway fuel economy (*e.g.*, 246-378 on one tank). Conversely, the EPA label presents a single number (*e.g.*, 300 miles on one tank) based on the vehicle's combined city-highway fuel economy. 40 CFR 600.311-12(j)(1). Although the resulting numbers are similar and based on the same test procedures, the differences in presentation have the potential to confuse consumers.

<sup>29</sup> The proposed amendments are consistent with the EPA Act 92, which gives the Commission discretion to consolidate its requirements "with other labels providing information to the consumer." 42 U.S.C. 13232(a). In addition, the Energy and Policy Conservation Act, 42 USC 32908(e)(2), authorizes the FTC to enforce the EPA automobile label requirements issued pursuant to 49 U.S.C. 32908(b).

Unlike the FTC labels, the EPA labels for FFVs allow, but do not require, driving range disclosures. In support of making driving range disclosures optional, EPA has indicated that nearly all FFV owners (99%) use only regular gasoline, limiting the practical value of driving range disclosures.<sup>30</sup> EPA's conventional gasoline label does not disclose driving range. Also, the inclusion of driving range on the FFV label alters the location of the "gallons per 100 miles" disclosure.<sup>31</sup> Other factors, however, may support a mandatory driving range disclosure for these vehicles. First, the difference between driving range performance for alternative fuel and conventional gasoline operation can be significant.<sup>32</sup> Second, the use of alternative fuels may increase in the future. Therefore, to ensure the label provides vehicle buyers with comparative driving range performance for both alternative fuel and conventional gasoline, the Commission proposes to require use of the EPA FFV label that contains the vehicle's alternative fuel and gasoline driving range. This proposal would effectively eliminate use of the EPA FFV label that does not disclose driving range.

The Commission seeks comment on all aspects of this proposal. In particular, comments should indicate whether driving range information on FFV labels is necessary given the few consumers that appear to use alternative fuel in such vehicles. Comments should also address whether the elimination of FFV label that does not disclose driving range would have any negative impacts on consumers' efforts to compare vehicles. The Commission also seeks

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<sup>30</sup> 76 FR at 39485.

<sup>31</sup> See EPA sample labels at <http://www.epa.gov/otaq/carlabel/fealllabels.pdf>.

<sup>32</sup> For example, EPA's sample fuel economy label FFV's displays a 390 mile driving range for gasoline and a 270 mile range for E85 operation. See 76 FR at 39584 (Figure 5).

comment on whether there are any types of AFVs on the market that are not covered by the EPA label, and, if so, whether the Commission should retain its current labeling requirements for such vehicles.

## **B. Labels for Used AFVs**

*Background:* In the ANPR, the Commission sought comment on whether to change the Rule's labeling requirements for used AFVs.<sup>33</sup> Under the current Rule, used AFV dealers must post labels with general tips and references to government telephone numbers and websites that provide additional information.<sup>34</sup> However, these labels do not contain vehicle-specific information, such as cruising range. Because these labels provide limited information and are likely to impose increasing burdens on used car dealers as the AFV market expands, the Commission asked whether it should retain the requirement and, if so, whether to change the label's content.

*Comments:* Three comments urged the Commission to eliminate the FTC labeling requirement for used vehicles, while two suggested alternative approaches to the existing label. The Alliance, the National Automobile Dealers Association (NADA), and GM recommended elimination because the used vehicle label does not provide consumers with significant benefit

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<sup>33</sup> 16 CFR 309.21. The Act contains no specific requirement for used AFV labels nor does it specifically exclude used vehicles from its coverage. *See* 42 U.S.C. 13211 and 13232(a). In promulgating the original Rule in 1995, the Commission determined that used AFV labeling was "appropriate" because "consumers would likely have the same need for information, and would consider the same factors, whether they were contemplating a new or used AFV acquisition." 60 FR at 26941.

<sup>34</sup> The Commission's Used Car Rule (16 CFR Part 455) also requires used car dealers to affix on the vehicle the FTC's Buyers Guide, which contains warranty information about the vehicle. *See* 16 CFR Part 455.

and places unnecessary burden on used automobile dealers. NADA also argued that the rule, which does not apply to private used vehicle sellers, poses unfair burdens on dealers who account for only about half of all used vehicle transactions. In lieu of the current label which only provides general tips, these three comments suggested that consumers use [www.fueleconomy.gov](http://www.fueleconomy.gov) to locate specific vehicle information.

Although NADA recommended elimination of the used label altogether, it also suggested alternatively that the Commission insert an AFV disclosure into the FTC's current used vehicle Buyers Guide (16 CFR Part 455). NADA suggested that the FTC used vehicle Buyers Guide could state: "For more information on the fuel economy and fuel type for this vehicle, consult [www.fueleconomy.gov](http://www.fueleconomy.gov)."<sup>35</sup> In addition, EEI, the only comment that supported keeping the used vehicle label, urged the Commission to simplify the requirements by only requiring a link to the [www.fueleconomy.gov](http://www.fueleconomy.gov) website on the existing label.

*Discussion:* The Commission proposes to eliminate the requirement for a separate AFV label for used vehicles. Unlike in 1995, when the Commission originally issued its Alternative Fuels Rule, consumers can now access detailed used AFV information online at [www.fueleconomy.gov](http://www.fueleconomy.gov), including vehicle-specific fuel economy, energy consumption, and environmental impact data. Given the extensive information at [www.fueleconomy.gov](http://www.fueleconomy.gov), the benefits of a separate used vehicle label that contains only generic tips for consumers seem small compared to the costs of posting such labels. Accordingly, the used label does not appear necessary to "reasonably enable the consumer to make choices and comparisons" as

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<sup>35</sup> Use of the FTC's used vehicle Buyers Guide would be consistent with Congress' directive to "consolidate" the AFV information with other labels where appropriate. 42 U.S.C. 13232(a).

contemplated by the statute.<sup>36</sup> The Commission seeks comment on this proposal, including whether the Commission should consider including a link to [www.fueleconomy.gov](http://www.fueleconomy.gov) on the FTC's used vehicle Buyers Guide.

### **C. Alternative Fuel Labeling**

The Commission proposes no change to non-liquid alternative fuel requirements because two comments indicated that existing alternative fuel labeling helps consumers and no comment proposed changes.<sup>37</sup> EEI, for example, urged the Commission to retain existing requirements because fuel dispenser labels help ensure consumers choose fuels that match the needs of their vehicle's energy system.<sup>38</sup>

### **III. Paperwork Reduction Act**

The current Rule contains recordkeeping, disclosure, testing, and reporting requirements that constitute "information collection requirements" as defined by 5 CFR 1320.3(c) under the OMB regulations that implement the Paperwork Reduction Act (PRA).<sup>39</sup> OMB has approved the Rule's existing information collection requirements through April 30, 2013 (OMB Control No.

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<sup>36</sup> 42 U.S.C. 13232(a).

<sup>37</sup> NADA and EEI. No comments opposed existing requirements. NADA suggested that the Commission consider transferring the alternative fuel provisions from 16 CFR Part 309 to Part 306 (*i.e.*, the Fuel Rating Rule) to create a single rule governing motor vehicle fuel ratings and simplify compliance for the regulated community. Given that the Commission recently completed a review of Part 306, the Commission is not implementing NADA's suggestion at this time. In addition, aside from NADA's comment, the Commission has no evidence that the location of Part 309 has caused significant confusion for industry members. In the future, the Commission may consider consolidating the fuel information from Part 309 into Part 306.

<sup>38</sup> Another comment (Gibbs) listed various benefits provided by alternative fuels but did not specifically address the FTC's labeling requirements.

<sup>39</sup> 44 U.S.C. 3501-3521.

3084-0094). The proposed amendments would reduce the burdens associated with the Rule by eliminating FTC labeling requirements for vehicles subject to EPA's fuel economy labeling requirements.

In past PRA analyses, FTC staff has estimated the Rule applies to 1,121,153 alternative fuel vehicles, which mostly include flex-fuel vehicles. The staff estimated a two-minute average time to comply with the posting requirements for each of the approximately 1,121,153 new and used AFVs manufactured each year, for a total of 37,371 hours.<sup>40</sup> The staff also estimated that the Rule's vehicle labeling requirements apply to an estimated 1,121,153 new and used AFVs each year at 38 cents (per industry sources) for each label, the annual AFV labeling cost is estimated to be \$426,038 ( $\$0.38 \times 1,121,153$ ). The Commission believes that the proposed rule would eliminate the Rule's burden for all these vehicles. Accordingly, FTC staff is submitting a related clearance request to OMB to adjust these previously submitted burden totals.

The Commission invites comments on: (1) whether the proposed modifications to the current labeling requirements are necessary and/or will be practically useful; (2) the accuracy of the associated burden estimates; (3) how to improve the quality, utility, and clarity of the labels; and (4) how to minimize further the burden of the collections of information.

Your responses to the points above additionally should be sent to OMB. If sent by U.S. mail, they should be addressed to Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Federal Trade Commission, New Executive Office Building, Docket Library, Room 10102, 725 17th Street, N.W., Washington, D.C. 20503. Comments sent to OMB by U.S. postal mail, however, are subject to delays due to

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<sup>40</sup> 75 FR 366, 367 (Jan. 5, 2010); 75 FR 12750, 12751 (Mar. 17, 2010).

heightened security precautions. Thus, comments should instead be sent by facsimile to (202) 395-5167.

#### **IV. Regulatory Flexibility Act**

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612, requires that the Commission provide an Initial Regulatory Flexibility Analysis (IRFA) with a Proposed Rule and a Final Regulatory Flexibility Analysis (FRFA), with the final Rule, if any, unless the Commission certifies that the Rule will not have a significant economic impact on a substantial number of small entities.<sup>41</sup>

The Commission does not anticipate that the Proposed Rule will have a significant economic impact on a substantial number of small entities. The Commission recognizes that some affected entities may qualify as small businesses under the relevant thresholds. Because the Proposed Rule would reduce burdens, however, the Commission does not expect that the economic impact of the Rule will be significant.

Accordingly, this document serves as notice to the Small Business Administration of the FTC's certification of no effect. To ensure the accuracy of this certification, however, the Commission requests comment on whether the Proposed Rule will have a significant impact on a substantial number of small entities, including specific information on the number of entities that would be covered by the Proposed Rule, the number of these companies that are "small entities," and the average annual burden for each entity. Although the Commission certifies under the RFA that the Rule proposed in this Notice would not, if promulgated, have a significant impact on a substantial number of small entities, the Commission has determined, nonetheless, that it is

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<sup>41</sup> 5 U.S.C. 603-605.

appropriate to publish an IRFA in order to inquire into the impact of the Proposed Rule on small entities. Therefore, the Commission has prepared the following analysis:

**A. Description of the Reasons That Action by the Agency Is Being Considered**

To provide clear disclosures to consumers and reduce labeling burden, the Commission proposes to direct manufacturers to use EPA fuel economy labels in lieu of the existing FTC label.

**B. Statement of the Objectives of, and Legal Basis for, the Proposed Rule**

Section 406(a) of EPCA 92 directed the Commission to establish uniform labeling requirements, to the greatest extent practicable, for alternative fuels and AFVs.<sup>42</sup>

**C. Small Entities to Which the Proposed Rule Will Apply**

Under the Small Business Size Standards issued by the Small Business Administration, automobile manufacturers qualify as small businesses if they have fewer than 1,000 employees.

The Commission estimates that approximately six vehicle manufacturers or commercial importers subject to the Proposed Rule qualify as small businesses. The Commission seeks comment and information with regard to the estimated number and nature of small business entities for which the Proposed Rule would have a significant economic impact.

**D. Projected Reporting, Recordkeeping, and Other Compliance Requirements**

The Proposed Rule does not impose any additional reporting, recordkeeping, or compliance requirements. Rather, the Proposed Rule would eliminate FTC labeling requirements for certain vehicles. The classes of small entities affected by the Rule include fuel distributors, vehicle manufacturers, and fuel retailers.

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<sup>42</sup> 42 U.S.C. 13232(a). EPCA 92 did not specify what information should be displayed on these labels. Instead, it provided generally that the Commission's rule must require disclosure of "appropriate," "useful," and "timely" cost and benefit information on "simple" labels.



#### **E. Duplicative, Overlapping, or Conflicting Federal Rules**

The Commission has not identified any other federal statutes, rules, or policies that would duplicate, overlap, or conflict with the Proposed Rule. Indeed, the Proposed Rule would harmonize labeling requirements for new AFVs by consolidating the FTC's AFV labels with fuel economy labels required by EPA and NHTSA. The Commission invites comment and information on this issue.

#### **F. Significant Alternatives to the Proposed Rule**

The Commission seeks comment and information on the need, if any, for alternative compliance methods that would reduce the economic impact of the Rule on such small entities.

If the comments filed in response to this Notice identify small entities that would be affected by the Rule, as well as alternative methods of compliance that would reduce the economic impact of the Rule on such entities, the Commission will consider the feasibility of such alternatives and determine whether they should be incorporated into the final rule.

#### **V. Request for Comment**

The Commission invites affected industries, consumer organizations, federal and state agencies, and other interested persons to submit written comments on any issue of fact, law, or policy that may bear upon the proposals under consideration. Please include explanations for any answers provided, as well as supporting evidence where appropriate. After examining the comments, the Commission will determine whether to issue specific amendments.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before August 17, 2012. Write "Alternative Fuels Labeling (16 CFR Part 309) (Matter No. R311002)" on your comment. Your comment – including your

name and your state – will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Website, at

<http://www.ftc.gov/os/publiccomments.shtm>. As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission website.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, such as anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any "[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential . . .," as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).<sup>43</sup> Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

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<sup>43</sup> In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online, or to send them to the Commission by courier or overnight service. To make sure that the Commission considers your online comment, you must file it at <https://ftcpublic.commentworks.com/ftc/altfuelslabelingnprm> by following the instructions on the web-based form. If this Notice appears at <http://www.regulations.gov/#!home>, you also may file a comment through that website.

If you file your comment on paper, write “Proposed Amendments to the Alternative Fuels Rule, (16 CFR Part 309) (Matter No. R311002)” on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, Room H-113 (Annex N), 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission website at <http://www.ftc.gov> to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before August 17, 2012. You can find more information, including routine uses permitted by the Privacy Act, in the Commission’s privacy policy, at <http://www.ftc.gov/ftc/privacy.htm>.

## **VI. Proposed Rule**

### **List of Subjects in 16 CFR Part 309**

Alternative fuel, Alternative fueled vehicle, Energy conservation, Labeling, Reporting and recordkeeping, Trade practices.

The Commission proposes to amend 16 CFR Part 309 as follows:

**Part 309 - Labeling Requirements for Alternative Fuels and Alternative Fueled Vehicles**

1. The authority citation for part 309 continues to read as follows:

**AUTHORITY:** 42 U.S.C. 13232(a).

2. In § 309.1 add new paragraph (f)(3) to read as follows:

**§ 309.1 Definitions.**

\* \* \* \* \*

(f) \* \* \*

(3) any vehicle that is -

- (i) a new qualified fuel cell motor vehicle (as defined in 26 U.S.C. 30B(b)(3));
- (ii) a new advanced lean burn technology motor vehicle (as defined in 26 U.S.C. 30B(c)(3));
- (iii) a new qualified hybrid motor vehicle (as defined in 26 U.S.C. 30B(d)(3)); or
- (iv) any other type of vehicle that the Administrator of the Environmental Protection Agency demonstrates to the Secretary would achieve a significant reduction in petroleum consumption.

\* \* \* \* \*

3. In § 309.1, remove paragraphs (dd), (ee), and (ff) and redesignate (gg) as (dd).

4. Revise § 309.20 to read as follows:

**§ 309.20 Labeling requirements for new covered vehicles.**

(a) Before offering a new covered vehicle for acquisition to consumers, manufacturers shall affix or cause to be affixed, and new vehicle dealers shall maintain or cause to be maintained, fuel economy labels as required by under 40 CFR Part 600. For dual fueled vehicles, such labels

must include driving range information for alternative fuel and gasoline operation and be otherwise consistent with provisions in 40 CFR Part 600.

(b) If an aftermarket conversion system is installed on a vehicle by a person other than the manufacturer prior to such vehicle's being acquired by a consumer, the manufacturer shall provide that person with the vehicle's fuel economy label prepared pursuant to 40 CFR Part 600 and ensure that new fuel economy vehicle labels are affixed to such vehicles as required by paragraph (a) of this section.

5. Remove §§ 309.21 and 309.22.
6. Redesignate § 309.23 as 309.21.
7. In Appendix A to part 309, remove figures 4, 5, 5.1, and 6.

By direction of the Commission.

Donald S. Clark  
Secretary.

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